STATE OF MICHIGAN

COURT OF APPEALS

DAWN MARIE PAUKNER,

Plaintiff-Appellant,

v

J. L. MILLING, INC., MICHAEL DAVID JOHNSON, ZACH DAVID, and JASON COOK,

Defendants-Appellees.

UNPUBLISHED
September 27, 2005

No. 254427
Ionia Circuit Court
LC No. 03-022671-NI

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order dismissing this case for discovery violations. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was a passenger in a truck when it collided with a pavement-moving machine. Plaintiff filed suit against the owner and operators of the machine, complaining of abdominal injuries, pain, anguish, medical expenses, and lost wages. Plaintiff sought damages to the extent available under the no-fault act. See MCL 500.3135. Defendants moved for dismissal in response to plaintiff's persistent failure to provide requested discovery materials. In granting the motion, the trial court stated:

> Well, the Court has again reviewed the file, looked at the orders that have been entered and have not been complied with. I think based on the information in the defendant's motion, the information set forth there is correct. It appears to me that the plaintiff has violated the discovery orders on numerous occasions. The Court has had extra hearings because of that. Discovery is not done, although it has been ordered to be done and pursuant to MCR 2.504(B)(1), I'll dismiss the case with prejudice.

We review a lower court's decisions concerning discovery for an abuse of discretion. *Baker v Oakwood Hosp Corp*, 239 Mich App 461, 478; 608 NW2d 823 (2000). "[A] court abuses its discretion when an unprejudiced person considering the facts upon which the trial court acted, would say that there was no justification or excuse for the ruling made." *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 761-762; 685 NW2d 391 (2004) (internal quotation marks, brackets, and citations omitted). The court rules "explicitly authorize a trial court to enter

an order dismissing a proceeding . . . against a party who fails to obey an order to provide discovery." *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999), citing MCR 2.313(B)(2)(c).

Plaintiff failed to respond to defendants' first set of discovery requests, notwithstanding promises to do so. The trial court issued an order requiring plaintiff to respond within fourteen days, and appear for deposition within thirty days, but plaintiff failed to do either. A second motion and order followed, the latter requiring plaintiff to pay costs attendant to the motion within thirty days, but plaintiff failed to comply. Upon finally receiving responses to written discovery requests, defendants issued subpoenas to plaintiff's medical providers for medical records, but were advised by the copy service that plaintiff refused to sign the necessary releases. Defendants also complained generally that plaintiff had "consistently and deliberately avoided making discovery in this matter despite legitimate requests by Defendants for discoverable and necessary information relating to her claims."

At the motion hearing, defense counsel reported that, only earlier that day, he received a check to cover expenses engendered by the discovery delays, but protested that "we're having a problem that's bigger than can be cured with the late payment of that fine." Defense counsel further detailed that, of the several medical providers from whom records were sought, only three had provided them.

On appeal, plaintiff's brief argument consists of stating that the trial court did not articulate findings or conclusions pertaining to the factors relevant to a decision whether to dismiss for discovery violations, and presenting an exhibit that seems to show that she had authorized six medical providers to provide requested records. Plaintiff asserts that this put her in compliance with the order in effect at the time of the decision below. We disagree, and affirm the trial court's decision.

The exhibit provided does not appear in the lower court record, and so constitutes an attempt to enlarge the record. See MCR 7.210(A) ("Appeals to the Court of Appeals are heard on the *original* record." [Emphasis added]). In any event, although the exhibit lists six invoices from Record Copy Services dating between December 4, 2003, and January 9, 2004, such a list proves neither that plaintiff had signed releases in connection with *all* pertinent providers, nor that she otherwise did not share in responsibility for some of the delays involved.

Because plaintiff addresses only the issue of the medical records, while failing to address the other serious discovery deficiencies of which defendants complained, the factual bases for which the trial court confirmed, she has failed to show that the trial court's decision to dismiss was an abuse of discretion. *Gilbert, supra*.

Affirmed.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Pat M. Donofrio